

§ 1.163

§ 1.163 Specification and arrangement of application elements in a plant application.

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. For a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

(b) The elements of the plant application, if applicable, should appear in the following order:

(1) Plant application transmittal form.

(2) Fee transmittal form.

(3) Application data sheet (see § 1.76).

(4) Specification.

(5) Drawings (in duplicate).

(6) Executed oath or declaration (§ 1.162).

(c) The specification should include the following sections in order:

(1) Title of the invention, which may include an introductory portion stating the name, citizenship, and residence of the applicant.

(2) Cross-reference to related applications (unless included in the application data sheet).

(3) Statement regarding federally sponsored research or development.

(4) Latin name of the genus and species of the plant claimed.

(5) Variety denomination.

(6) Background of the invention.

(7) Brief summary of the invention.

(8) Brief description of the drawing.

(9) Detailed botanical description.

(10) A single claim.

(11) Abstract of the disclosure.

(d) The text of the specification or sections defined in paragraph (c) of this section, if applicable, should be preceded by a section heading in upper case, without underlining or bold type.

[65 FR 54675, Sept. 8, 2000]

§ 1.164 Claim.

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the prin-

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cipal distinguishing characteristics. More than one claim is not permitted.

(35 U.S.C. 162)

§ 1.165 Plant drawings.

(a) Plant patent drawings should be artistically and competently executed and must comply with the requirements of § 1.84. View numbers and reference characters need not be employed unless required by the examiner. The drawing must disclose all the distinctive characteristics of the plant capable of visual representation.

(b) The drawings may be in color. The drawing must be in color if color is a distinguishing characteristic of the new variety. Two copies of color drawings or photographs must be submitted.

[58 FR 38726, July 20, 1993, as amended at 65 FR 57058, Sept. 20, 2000; 69 FR 56543, Sept. 21, 2004]

§ 1.166 Specimens.

The applicant may be required to furnish specimens of the plant, or its flower or fruit, in a quantity and at a time in its stage of growth as may be designated, for study and inspection. Such specimens, properly packed, must be forwarded in conformity with instructions furnished to the applicant. When it is not possible to forward such specimens, plants must be made available for official inspection where grown.

(35 U.S.C. 114, 161)

§ 1.167 Examination.

Applications may be submitted by the Patent and Trademark Office to the Department of Agriculture for study and report.

[62 FR 53196, Oct. 10, 1997]

REISSUES

AUTHORITY: Secs. 1.171 to 1.179 also issued under 35 U.S.C. 251.

§ 1.171 Application for reissue.

An application for reissue must contain the same parts required for an application for an original patent, complying with all the rules relating thereto except as otherwise provided, and in

addition, must comply with the requirements of the rules relating to reissue applications.

[62 FR 53196, Oct. 10, 1997]

§ 1.172 Applicants, assignees.

(a) A reissue oath must be signed and sworn to or declaration made by the inventor or inventors except as otherwise provided (see §§1.42, 1.43, 1.47), and must be accompanied by the written consent of all assignees, if any, owning an undivided interest in the patent, but a reissue oath may be made and sworn to or declaration made by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent. All assignees consenting to the reissue must establish their ownership interest in the patent by filing in the reissue application a submission in accordance with the provisions of §3.73(b) of this chapter.

(b) A reissue will be granted to the original patentee, his legal representatives or assigns as the interest may appear.

(35 U.S.C. 6, Pub. L. 97-247)

[24 FR 10332, Dec. 22, 1959, as amended at 48 FR 2713, Jan. 20, 1983; 62 FR 53196, Oct. 10, 1997]

§ 1.173 Reissue specification, drawings, and amendments.

(a) *Contents of a reissue application.* An application for reissue must contain the entire specification, including the claims, and the drawings of the patent. No new matter shall be introduced into the application. No reissue patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent, pursuant to 35 U.S.C. 251.

(1) *Specification, including claims.* The entire specification, including the claims, of the patent for which reissue is requested must be furnished in the form of a copy of the printed patent, in double column format, each page on only one side of a single sheet of paper. If an amendment of the reissue application is to be included, it must be made pursuant to paragraph (b) of this section. The formal requirements for papers making up the reissue application

other than those set forth in this section are set out in §1.52. Additionally, a copy of any disclaimer (§1.321), certificate of correction (§§1.322 through 1.324), or reexamination certificate (§1.570) issued in the patent must be included. (See also §1.178).

(2) *Drawings.* Applicant must submit a clean copy of each drawing sheet of the printed patent at the time the reissue application is filed. If such copy complies with §1.84, no further drawings will be required. Where a drawing of the reissue application is to include any changes relative to the patent being reissued, the changes to the drawing must be made in accordance with paragraph (b)(3) of this section. The Office will not transfer the drawings from the patent file to the reissue application.

(b) *Making amendments in a reissue application.* An amendment in a reissue application is made either by physically incorporating the changes into the specification when the application is filed, or by a separate amendment paper. If amendment is made by incorporation, markings pursuant to paragraph (d) of this section must be used. If amendment is made by an amendment paper, the paper must direct that specified changes be made, as follows:

(1) *Specification other than the claims.* Changes to the specification, other than to the claims, must be made by submission of the entire text of an added or rewritten paragraph, including markings pursuant to paragraph (d) of this section, except that an entire paragraph may be deleted by a statement deleting the paragraph without presentation of the text of the paragraph. The precise point in the specification must be identified where any added or rewritten paragraph is located. This paragraph applies whether the amendment is submitted on paper or compact disc (see §§1.52(e)(1) and 1.821(c), but not for discs submitted under §1.821(e)).

(2) *Claims.* An amendment paper must include the entire text of each claim being changed by such amendment paper and of each claim being added by such amendment paper. For any claim changed by the amendment paper, a parenthetical expression “amended,” “twice amended,” etc., should follow